

AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL**

**No. 288**

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**Introduced by Senator Lieu**

February 14, 2013

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An act to amend Section ~~51~~ 230 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 288, as amended, Lieu. ~~Director of Industrial Relations.~~  
*Employment protections: time off.*

*Existing law prohibits an employer from discharging or in any manner discriminating against an employee for taking time off to serve on a jury, an employee who is a victim of a crime for taking time off to appear in court as a witness in any judicial proceeding, or an employee who is a victim of domestic violence or a victim of sexual assault for taking time off from work to obtain or attempt to obtain prescribed relief. A violation of these provisions, under certain circumstances, is a misdemeanor.*

*This bill would additionally prohibit an employer from discharging or in any manner discriminating or retaliating against an employee who is a victim, as defined, of specified offenses, as defined, for taking time off from work, upon the victim's request, to appear in court to be heard at any proceeding, including any delinquency proceeding, involving a postarrest release decision, plea, sentencing, postconviction release decision, or any proceeding in which a right of the victim is at issue. Because a violation of the bill's requirements under certain circumstances would be a crime, the bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Existing law establishes the Department of Industrial Relations for specified purposes and provides for its administration by the Director of Industrial Relations.~~

~~This bill would make a technical, nonsubstantive change to that administration provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 230 of the Labor Code is amended to*  
2     *read:*

3     230. (a) An employer may not discharge or in any manner  
4     discriminate against an employee for taking time off to serve as  
5     required by law on an inquest jury or trial jury, if the employee,  
6     prior to taking the time off, gives reasonable notice to the employer  
7     that he or she is required to serve.

8     (b) An employer may not discharge or in any manner  
9     discriminate or retaliate against an employee, including, but not  
10    limited to, an employee who is a victim of a crime, for taking time  
11    off to appear in court to comply with a subpoena or other court  
12    order as a witness in any judicial proceeding.

13    (c) (1) An employer may not discharge or in any manner  
14    discriminate or retaliate against an employee who is a victim of  
15    domestic violence or a victim of sexual assault for taking time off  
16    from work to obtain or attempt to obtain any relief, including, but  
17    not limited to, a temporary restraining order, restraining order, or  
18    other injunctive relief, to help ensure the health, safety, or welfare  
19    of the victim or his or her child.

20    (2) *An employer may not discharge or in any manner*  
21    *discriminate or retaliate against an employee who is a victim of*  
22    *an offense listed in this paragraph for taking time off from work,*  
23    *upon the victim's request, to appear in court to be heard at any*  
24    *proceeding, including any delinquency proceeding, involving a*

1 *postarrest release decision, plea, sentencing, postconviction release*  
2 *decision, or any proceeding in which a right of the victim is at*  
3 *issue. The offenses include all of the following:*

4 (A) *Vehicular manslaughter while intoxicated, as defined in*  
5 *subdivision (c) of Section 191.5 of the Penal Code.*

6 (B) *Felony child abuse likely to produce great bodily harm or*  
7 *a death, as defined in Section 273a of the Penal Code.*

8 (C) *Assault resulting in the death of a child under eight years*  
9 *of age, as defined in Section 273ab of the Penal Code.*

10 (D) *Felony domestic violence, as defined in Section 273.5 of*  
11 *the Penal Code.*

12 (E) *Felony physical abuse of an elder or dependent adult, as*  
13 *defined in subdivision (b) of Section 368 of the Penal Code.*

14 (F) *Felony stalking, as defined in Section 646.9 of the Penal*  
15 *Code.*

16 (G) *Solicitation for murder, as defined in subdivision (b) of*  
17 *Section 653f of the Penal Code.*

18 (H) *A serious felony, as defined in subdivision (c) of Section*  
19 *1192.7 of the Penal Code.*

20 (I) *Hit and run causing death or injury, as defined in Section*  
21 *20001 of the Vehicle Code.*

22 (J) *Felony driving under the influence causing injury, as defined*  
23 *in Section 23153 of the Vehicle Code.*

24 (d) (1) *As a condition of taking time off for a purpose set forth*  
25 *in subdivision (c), the employee shall give the employer reasonable*  
26 *advance notice of the employee's intention to take time off, unless*  
27 *the advance notice is not feasible.*

28 (2) *When an unscheduled absence occurs, the employer shall*  
29 *not take any action against the employee if the employee, within*  
30 *a reasonable time after the absence, provides a certification to the*  
31 *employer. Certification shall be sufficient in the form of any of*  
32 *the following:*

33 (A) *A police report indicating that the employee was a victim*  
34 *of ~~domestic violence or sexual assault~~ an offense specified in*  
35 *subdivision (c).*

36 (B) *A court order protecting or separating the employee from*  
37 *the perpetrator of an ~~act of domestic violence or sexual assault~~*  
38 *offense specified in subdivision (c), or other evidence from the*  
39 *court or prosecuting attorney that the employee has appeared in*  
40 *court.*

(C) Documentation from a medical professional, domestic violence advocate or advocate for victims of sexual assault, health care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from an act of domestic violence or sexual assault.

(3) To the extent allowed by law, the employer shall maintain the confidentiality of any employee requesting leave under subdivision (c).

(e) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has taken time off for a purpose set forth in subdivision (a), (b), or (c) shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure or hearing authorized by law is guilty of a misdemeanor.

(f) (1) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has exercised his or her rights as set forth in subdivision (a), (b), or (c) may file a complaint with the Division of Labor Standards Enforcement of the Department of Industrial Relations pursuant to Section 98.7.

(2) Notwithstanding any time limitation in Section 98.7, an employee filing a complaint with the division based upon a violation of subdivision (c) shall have one year from the date of occurrence of the violation to file his or her complaint.

(g) An employee may use vacation, personal leave, or compensatory time off that is otherwise available to the employee under the applicable terms of employment, unless otherwise provided by a collective bargaining agreement, for time taken off for a purpose specified in ~~subdivision (a), (b), or (c)~~ *this section*. The entitlement of any employee under this section shall not be diminished by any collective bargaining agreement term or condition.

(h) For purposes of this section:

1 (1) “Domestic violence” means any of the types of abuse set  
2 forth in Section 6211 of the Family Code, as amended.

3 (2) “Sexual assault” means any of the crimes set forth in Section  
4 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269,  
5 273.4, 285, 286, 288, 288a, 288.5, 289, or 311.4 of the Penal Code,  
6 as amended.

7 (3) “Victim” means any person who suffers direct or threatened  
8 physical, psychological, or financial harm as a result of the  
9 commission or attempted commission of a crime or delinquent act.  
10 The term “victim” also includes the person’s spouse, parent, child,  
11 sibling, or guardian.

12 SEC. 2. No reimbursement is required by this act pursuant to  
13 Section 6 of Article XIII B of the California Constitution because  
14 the only costs that may be incurred by a local agency or school  
15 district will be incurred because this act creates a new crime or  
16 infraction, eliminates a crime or infraction, or changes the penalty  
17 for a crime or infraction, within the meaning of Section 17556 of  
18 the Government Code, or changes the definition of a crime within  
19 the meaning of Section 6 of Article XIII B of the California  
20 Constitution.

21 ~~SECTION 1. Section 51 of the Labor Code is amended to read:~~

22 ~~51. The department shall be conducted under the control of an~~  
23 ~~executive officer known as the Director of Industrial Relations.~~  
24 ~~The Director of Industrial Relations shall be appointed by the~~  
25 ~~Governor with the advice and consent of the Senate and hold office~~  
26 ~~at the pleasure of the Governor and shall receive an annual salary~~  
27 ~~provided for by Chapter 6 (commencing with Section 11550) of~~  
28 ~~Part 1 of Division 3 of Title 2 of the Government Code.~~